

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, California 95814**

NOTICE OF PROPOSED ACTION

DATE: June 30, 2006

REGULATION FILE: RH04039377

SUBJECT OF PROPOSED RULEMAKING

The Insurance Commissioner proposes to amend the regulations described below after considering comments from the public. The Commissioner proposes to revise California Code of Regulations, Title 10, Chapter 5, Subchapter 1, Article 1, §§ Title 10, Chapter 5, Subchapter 1, Article 1, §§ 2052.1 and 2052.4 (the “Standards for Approval and Disapproval of Names of Insurance Producers Regulation”), which have been in effect since October 1, 1973.

AUTHORITY AND REFERENCE

The proposed regulations will implement, interpret and make specific the provisions of Insurance Code section 1724.5. Insurance Code section 790.10 provides the authority for this rulemaking.

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation, as follows:

Date and time: **August 15, 2006, at 10:00 a.m.**

Location: **California Department of Insurance
300 Capitol Mall, 6th Floor
Sacramento, CA 95814**

The hearing will continue on the date noted above until all testimony has been submitted or 4:00p.m., whichever is earlier.

PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at 5:00 p.m. on August 15, 2006. Please direct all written comments to the following contact person:

Geoffrey Margolis, Senior Staff Counsel
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento CA 95814
Telephone: (916) 491-3558
margolisg@insurance.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. If he is unavailable, inquiries may be addressed to the following backup contact person:

John Madriz, Associate Analyst – Policy Unit, Licensing Services Division
California Department of Insurance
320 Capitol Mall
Sacramento, CA 95814
Telephone: (916) 492-3057
madrizj@insurance.ca.gov

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to one of the contact persons at his respective address listed above, no later than 5:00 p.m. on August 15, 2006. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: NameApprovalRegs@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Geoffrey Margolis and sent to the following facsimile number: (916) 324-1883. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

INFORMATIVE DIGEST

Summary of Existing Law and Policy Statement Overview

Every insurance producer who transacts business under a business (true or fictitious) must obtain approval of that name by the California Department of Insurance pursuant to California Insurance Code Section 1724.5. Additionally, CIC Section 1724.5 provides authority for the Insurance Commissioner to disapprove the use of any true or fictitious name if it interferes with a name already in use (or under reservation) and/or could mislead the public. In furtherance of the Commissioner's duties under this law, the Department of Insurance promulgated regulations in 1973 to clarify application of Section 1724.5 by identifying words that are prohibited or limited for use by insurance license producers.

These regulations have not been updated since their enactment, and the Commissioner believes it is necessary to revise them to better fit today's business climate.

Effect of Proposed Action

The Commissioner believes it is necessary to revise the California Code of Regulations, particularly since the existing regulations have not been updated since their initial enactment, the public is currently being misled by the use of certain names as insurance producers, the desire to reduce the number of rejected producer name applications, and to improve the transparency of government by disclosing the existing process used by the California Department of Insurance in evaluating proposed producer names for approval.

It can be beneficial to insurers, producers, and consumers when administrative costs related to compliance with regulatory requirements imposed are clarified. The proposed regulations tend to serve this purpose by ensuring that California's regulatory requirements in this area reduce misinterpretation and confusion by consumers and streamline the name approval process for producers. To the extent that producers, operating in compliance with California law, are able to devote additional resources — resources which would otherwise be expended submitting multiple name approval applications — to improving their financial stability or providing better products to consumers, everyone stands to benefit. The proposed regulations are reasonably necessary to the degree to which they help to achieve progress toward this goal.

One noteworthy change in the regulations is to add language to Section 2052.1 in order to provide prospective insurance producers, as well as existing insurance producers that desire a change in his/her/its business name, with a better understanding of the process used by the Insurance Commissioner in evaluating proposed names. This new language which states that "[s]imilarity is determined by comparing the first two, or more, words, initials, and/or numbers in the proposed name, with any or all of the words, initials, and/or numbers of all existing approved names," makes the current government process more transparent by disclosing the existing process used by the Department of Insurance during the name approval process.

Another major change in the regulations is to add language to Section 2052.4(c)(1) in order to provide prospective insurance producers, as well as existing insurance producers that desire a change in his/her/its business name, with an awareness that the Insurance Commissioner's position is that any business name is misleading if that name fails to include the word "insurance" followed by one of the following definitive words: "agency", "services", "marketing", "sales", "solutions", "center", and under certain conditions "broker", "brokers", "brokerage", & "associates."

The other significant change in the regulations is that the additions and removal of words to the "prohibited" word list in Section 2052.4(d) (now 2052.4(e)), and the additions and removal of words to the "improper use" word list in Section 2052.4(e) (now 2052.4(f)). These subdivisions have not been changed since their enactment in 1973. Since that time, the financial services industry and the business of insurance has evolved such that names that were misleading in 1973 may no longer be misleading today, and names that are misleading today may not have been so in 1973. Additionally, the Department has received complaints from the public regarding

various misleading names from the time of the enactment of the Regulations to the time of filing for this amendment.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO STATE/LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State. It may be possible, however, for the State to experience some cost savings if the current name approval declination rate of approximately fifty percent (50%) drops significantly after the regulations are amended.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has made an initial determination that the proposed regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. As described above, certain insurance producers who wish to operate under a true or fictitious name that is prohibited by these regulations may believe its ability to compete with businesses in other states is compromised. The Commissioner has considered proposed alternatives that would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES

- The Commissioner has made an initial determination that the proposed regulations will not have a significant cost impact on private persons or business entities. It may be possible, however, for producers who apply for name approval to experience a small cost savings if the applicant files fewer name approval applications after the regulations are amended.

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the welfare of the people of the state that the regulations apply to businesses.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in the state. The Commissioner estimates that the proposed regulations will not have any impact on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in the state. Interested parties are invited to comment on this issue.

IMPACT ON HOUSING COSTS

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are imposed or would be as effective as and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

IMPACT ON SMALL BUSINESS

The Commissioner has determined that the proposed regulations may affect small business as defined in Government Code section 11342.610, subdivision (b), paragraph (2).

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed regulations. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the final statement of reasons will be made available for inspection and copying once it has been

prepared. Requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying at 300 Capitol Mall, 17th Floor, Sacramento, California 95814, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find near the end of the left-most column, under the heading "Quick Links," the "Legal Information" link. Click it. On the "Legal Information" page, click on the "Proposed Regulations" link near the top of the page. When the "Search or Browse for Documents for Proposed Regulations" screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter "RH04039377" (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the California Insurance Code section number of the code section that the regulations implement ("1724.5" or "790.010"), or search by keyword ("Standards for Approval and Disapproval of Names of Insurance Producers" for example). Then, click on the "Submit" button to display links to the various filing documents.

To browse, click on the "Browse All Regulations" button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the "Name Approval Regulation" link, and click it. Links to the documents associated with these regulations will then be displayed.

MODIFIED LANGUAGE

If the regulations adopted by the Department differ from those which have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.